

Internal Revenue Service, Treasury

§5c.1305-1

**§5c.168(f)(8)-9 Pass-through leases—transfer of only the investment tax credit to a party other than the ultimate user of the property. [Reserved]**

**§5c.168(f)(8)-10 Leases between related parties. [Reserved]**

**§5c.168(f)(8)-11 Consolidated returns. [Reserved]**

**§5c.1305-1 Special income averaging rules for taxpayers otherwise required to compute tax in accordance with §5c.1256-3.**

(a) *In general.* If an eligible individual (as defined in section 1303 and the regulations thereunder) is described in the first sentence of §5c.1256-3(a), chooses the benefits of income averaging and otherwise complies with the special rules under section 1304 and the regulations thereunder, and has averagable income (as defined in section 1302 and the regulations thereunder) in excess of \$3,000, then the individual shall compute the tax under section 1301 as provided in this section. The computation under this section shall be in lieu of the computation under §5c.1256-3.

(b) *Computation of tax.* The individual shall compute the tax under section 1301 as follows:

*Step (1).* Compute tax under section 1301 and the regulations thereunder on all taxable income, including gains or losses on regulated futures contracts subject to section 1256(a) and the regulations thereunder, using rates applicable to the taxpayer for the taxable year which includes June 23, 1981.

*Step (2).* Compute tax under section 1301 and the regulations thereunder on all taxable income, including gains or losses on regulated futures contracts subject to section 1256(a) and the regulations thereunder, using rates applicable to the taxpayer for taxable years beginning in 1982.

*Step (3).* Compute the percentage of adjusted gross income attributable to all sources except regulated futures contracts subject to section 1256(a) and the regulations thereunder.

*Step (4).* Compute the percentage of adjusted gross income attributable to regulated futures contracts subject to section 1256(a) and the regulations thereunder. Both the percentage in Step (3) and the percentage in Step (4) are to be rounded to the nearest percent. The sum of both percentages must equal 100 percent.

*Step (5).* Multiply the result of Step (1) with the result of Step (3).

*Step (6).* Multiply the result of Step (2) with the result of Step (4).

*Step (7).* Add the result of Step (5) and the result of Step (6). This is the tax for the individual under section 1301 for the taxable year which includes June 23, 1981.

(c) *Option to defer tax.* If an individual computes the tax under section 1301 as provided in paragraph (a) of this section, the individual may also opt to pay part or all of the deferrable tax under income averaging (as defined in paragraph (d) of this section) for the taxable year which includes June 23, 1981, in 2 or more, but not more than 5, equal installments in accordance with this section. Such individual may not opt to pay part or all of the deferrable tax in installments under §5c.1256-3. An individual opting to defer payment must attach a statement to Form 6781 indicating the computation of deferrable tax under income averaging, the number of installments in which the individual opts to pay the deferrable tax under income averaging, and the amount of each such payment.

(d) *Deferrable tax under income averaging.* The deferrable tax under income averaging is the excess of—

(1) The tax for the taxable year which includes June 23, 1981, computed pursuant to paragraph (b) of this section, over

(2) The tax for the taxable year which includes June 23, 1981, computed pursuant to paragraph (b) of this section, except that pre-transitional year gain or loss (as described in §5c.1256-2(g)) is omitted for purposes of recomputing the percentage in Step (4). As computed under this subparagraph (2), the sum of the percentage in Step (3) and Step (4) will not equal 100 percent.

(e) *Rules of application.* The provisions of §5c.1256-3 (c), (f), (g), (h), (i), and (j) shall apply in computing the tax and in determining the deferrable tax under income averaging under this section.

(f) *Examples.* The application of this section may be illustrated by the following examples:

*Example (1).* Individual A is a single, calendar year taxpayer with no dependents. A reported the following amounts for the following years on line 34 of Form 1040:

1977—\$80,000  
 1978—\$90,000  
 1979—\$100,000  
 1980—\$110,000

A reports the following amounts for the following lines on Form 1040 for 1981:

line 7—\$120,000  
 line 12—\$600,000  
 line 32b—\$19,000  
 line 33—\$1,000

The amount on line 12 is computed as follows: \$937,500 of gain is attributable to regulated futures contracts subject to section 1256(a). Of that total, 40 percent is short term capital gain (\$375,000) and 60 percent is long term capital gain (\$562,500). Of the long term capital gain, 40 percent is taxable (\$225,000). Therefore, A reports \$600,000 on line 12 (\$375,000+\$225,000).

The result of Step (1) is \$464,013.41. The result of Step (2) is \$337,051.52. The result of Step (3) is 17 percent. The result of Step (4) is 83 percent. The result of Step (5) is \$78,882.28. The result of Step (6) is \$279,752.76. The result of Step (7) is \$358,635.04. This is A's tax for 1981 under section 1301.

*Example (2).* The facts are the same as in Example (1), except that \$703,125 of the \$937,500 gain attributable to regulated futures contracts is pre-transitional year gain or loss (as described in §5c.1256-2(g)). A's tax for 1981 under section 1301 is \$358,635.04. A may opt to pay in installments a maximum of \$221,004.68 of the tax due in 1981. If A opts to defer the maximum amount and pay in 5 equal installments, A must pay for 1981 a tax of \$181,831.30. Each of the 4 succeeding installments is \$44,200.94 plus interest computed in accordance with §5c.1256-3(g)(3).

(Secs. 1305 and 7805 of the Internal Revenue Code of 1954 (78 Stat. 110, 26 U.S.C. 1305; 68A Stat. 917, 26 U.S.C. 7805); secs. 508(c) and 509 of the Economic Recovery Tax Act of 1981 (95 Stat. 333-335))

[T.D. 7826, 47 FR 38692, Sept. 2, 1982]

## **PART 5e—TEMPORARY INCOME TAX REGULATIONS, TRAVEL EXPENSES OF MEMBERS OF CONGRESS**

AUTHORITY: Secs. 280A(f)(4)(B) and 7805 of the Internal Revenue Code of 1954 (95 Stat. 1641, 26 U.S.C. 7805; 68A Stat. 917, 26 U.S.C. 7805).

### **§ 5e.274-8 Travel expenses of Members of Congress.**

(a) *In general.* Members of Congress (including any Delegate and Resident Commissioner) who are away from home within the meaning of section 162

(a), in the Washington, DC area, may elect in accordance with paragraph (f) of this section to deduct an amount described in paragraph (c) of this section as living expenses, without substantiation. A Member who elects under this section may not deduct any amount for the living expenses described in paragraph (b). A Member who does not make an election under this section must substantiate his expenses for living in Washington, DC in accordance with section 274 and §1.274-5.

(b) *Living expenses covered.* The amount allowed to be deducted without substantiation, pursuant to this section, for costs incurred for living in the Washington, DC area represents amounts expended for meals, lodging, and other incidental expenses. Meals include the actual cost of the food and expenses incident to the preparation and serving thereof. Lodging includes amounts paid for rent, care of premises, utilities, insurance and depreciation of household furnishings owned by the Member. In the case of a Member who lives in a residence owned by him in the Washington, DC area, the cost of lodging also includes depreciation on such residence. Other incidental expenses include laundry, cleaning, and local transportation. Local transportation includes travel within a 50 mile radius of Washington, DC, whether by private automobile, taxicab or other transportation for hire. Interest and taxes on personal property will not be considered expenses to be included within this paragraph.

(c)(1) *Amounts allowed without substantiation.* The amount that may be deducted pursuant to section 162 and these regulations is an amount equal to the product of the number of Congressional days in the taxable year, multiplied by the designated amount. The designated amount is—

(i) In the case of a Member who deducts interest and taxes attributable to the ownership of a personal residence in the Washington, DC area, two-thirds of the maximum amount of actual subsistence for Washington, DC payable pursuant to 5 U.S.C. 5702(c), or

(ii) In the case of a Member not described in paragraph (c)(1)(i), the maximum amount of actual subsistence for